

**ORIGINAL**

Arusi R. Loprinzi, OSB No. 033815  
 Email: [aloprinzi@k-hlaw.com](mailto:aloprinzi@k-hlaw.com)  
 111 SW Fifth Avenue, Suite 1775  
 Portland, OR 97204  
 Phone: 503.796.0909  
 Fax: 503.802.4757  
 Attorneys for Defendants LVNV Funding, LLC and  
 Resurgent Capital Services, L.P.

FILED 11 MAR 9 12:46 USDC-ORP

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF OREGON, PORTLAND DIVISION

ADAM FOXWORTHY,

Plaintiff,

vs.

LVNV FUNDING, LLC, a foreign limited  
 liability company, and RESURGENT CAPITAL  
 SERVICES, L.P., a foreign limited partnership,

Defendants.

Case No. **CV'11-291 MO**

[Removal from Circuit Court For The State Of  
 Oregon, County of Multnomah, Case No. 1012-  
 17801]

**DEFENDANTS LVNV FUNDING, LLC  
 AND RESURGENT CAPITAL SERVICES,  
 L.P.'S NOTICE OF REMOVAL  
 PURSUANT TO 28 U.S.C. §§ 1331, 1441(b)  
 AND (c), AND 1446**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
 OREGON:

**PLEASE TAKE NOTICE** that Defendants LVNV Funding, LLC ("LVNV") and Resurgent  
 Capital Services, L.P. ("Resurgent") (collectively "Defendants") hereby remove the action described  
 below from the Circuit Court of the State of Oregon, County of Multnomah, to the United States  
 District Court for the District of Oregon, Portland Division, pursuant to Sections 1331, 1441(b) and  
 (c), and 1446 of Title 28 of the United States Code ("U.S.C."). As set forth more fully below, this  
 case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Defendants have  
 satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over

1 this action pursuant to 28 U.S.C. § 1331. In support of this Notice of Removal, Defendants state the  
2 following:

3 **I. THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C.**  
4 **SECTIONS 1331 AND 1441**

5 On or about December 22, 2010, plaintiff Adam Foxworthy ("Plaintiff") filed a Complaint in  
6 the Circuit Court of the State of Oregon, County of Multnomah ("Circuit Court"), entitled  
7 *Foxworthy v. LVNV Funding, LLC, et al.*, Case No. 1012-17801. Plaintiff's complaint relates to  
8 alleged debt collection activity by Defendants. The Complaint alleges causes of action for violation  
9 of the Federal Fair Debt Collection Practices Act, and Invasion of Privacy. The Complaint and  
10 Summons are attached hereto as **Exhibit 1**, as required by 28 U.S.C. § 1446(a).

11 Because this Action arises under federal law that can be ascertained from the face of  
12 Plaintiff's Complaint, this Court has original jurisdiction over this Action pursuant to 28 U.S.C. §  
13 1331. Furthermore, this Court has supplemental jurisdiction over all of Plaintiff's other claims,  
14 which arise out of the "same case or controversy" pursuant to 28 U.S.C. § 1367(a). Accordingly, the  
15 Action may be removed to this Court by Removing Defendant pursuant to 28 U.S.C. § 1441.

16 **II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

17 On or about December 22, 2010, Plaintiff filed this action in the Circuit Court. Defendants  
18 have not yet been served with a copy of said Complaint. This Notice of Removal is timely in that it  
19 was filed within thirty (30) days from the point at which Defendants had notice that the action was  
20 removable, and less than a year after the commencement of the state court action. *See* 28 U.S.C. §  
21 1446(b).

22 The Oregon State Circuit Court is located within the United States District Court for the  
23 District of Oregon, Portland Division. *See* 28 U.S.C. § 84(d). Thus, venue is proper in this Court  
24 because it is the "district and division embracing the place where such action is pending." 28 U.S.C.  
25 § 1441(a).

26 In compliance with 28 U.S.C. § 1446(d), Defendants will serve on Plaintiff and will file with  
27 the Clerk of the Circuit Court, a "Notice to the Clerk of the Circuit Court and To Adverse Parties of  
28 Filing of Notice of Removal of Civil Action to Federal Court," attaching a copy of this Notice of

1 Removal.

2 No previous application has been made for the relief requested herein, and Defendants are  
3 not aware of any other parties that have been served with the Complaint at this time.

4 WHEREFORE, Defendants respectfully remove this action from the Circuit Court of the  
5 State of Oregon, County of Multnomah, to this Court pursuant to 28 U.S.C. §§ 1331, 1441 and 1446.

6 DATED: March 9, 2011.

7 KIVEL & HOWARD LLP

8  
9 By 

Arasi R. Loprinzi, OSB No. 033815

Email: [aloprinzi@k-hlaw.com](mailto:aloprinzi@k-hlaw.com)

Attorneys for Defendants

LVNV Funding, LLC and

Resurgent Capital Services, L.P.

TRUE COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON . .  
 FOR THE COUNTY OF MULTNOMAH

ADAM FOXWORTHY,

Plaintiff,

v.

LVNV FUNDING, LLC,

a foreign limited liability company,

and RESURGENT CAPITAL SERVICES, L.P.,

a foreign limited partnership,

Defendants.

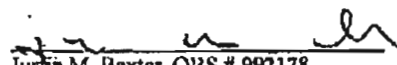
Case No. 1212-17801

TO: ~~LVNV Funding, LLC~~, c/o its registered agent The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801.

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

## NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions, you should see an attorney immediately. If you need help finding an attorney, you may call the Oregon State Bar Lawyer's Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7636.

  
 Justin M. Baxter, OBS # 992178  
 Attorney for Plaintiff

STATE OF OREGON       )  
                                   ) ss.  
 County of Washington   )

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

  
 Justin M. Baxter, OBS # 992178  
 Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

  
 Justin M. Baxter, OBS # 992178  
 Attorney for Plaintiffs

12:25  
**TRUE COPY**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ADAM FOXWORTHY,

Plaintiff,

v.

LVNV FUNDING, LLC,

a foreign limited liability company,  
and RESURGENT CAPITAL SERVICES, L.P.,  
a foreign limited partnership,

Defendants.

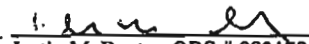
Case No. 1212-17801

TO: Resurgent Capital Services, L.P., aka Resurgent Capital Services, Limited Partnership, c/o its registered agent CT Corporation System, 388 State Street, Suite 420, Salem, OR 97301.

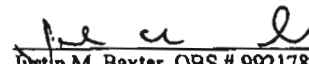
You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

## NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

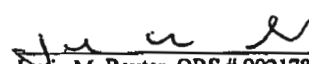
You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff. If you have any questions, you should see an attorney immediately. If you need help finding an attorney, you may call the Oregon State Bar Lawyer's Referral Service at (503) 684-3763 or toll free in Oregon at (800) 452-7636.

  
Justin M. Baxter, OBS # 992178  
Attorney for PlaintiffSTATE OF OREGON )  
County of Washington ) ss.  
County of Washington )

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

  
Justin M. Baxter, OBS # 992178  
Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

  
Justin M. Baxter, OBS # 992178  
Attorney for Plaintiffs



TRUE COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ADAM FOXWORTHY,

Plaintiff,

v.

LVNV FUNDING, LLC, a foreign limited  
liability company, and RESURGENT  
CAPITAL SERVICES, L.P., a foreign  
limited partnership,

Defendants.

Case No. **1012-17801**

COMPLAINT

Fair Debt Collection Practices Act; Invasion  
of Privacy

(Complaint Seeking Over \$50,000)

Not Subject to Mandatory Arbitration

Jury Trial Requested

1.

Plaintiff Adam Foxworthy ("plaintiff") is a natural person residing in the State of Oregon.

2.

Defendant LVNV Funding, LLC. ("LVNV") is a foreign limited liability company engaged in  
the business of collecting consumer debts.

3.

Defendant Resurgent Capital Services, L.P. ("Resurgent") is a foreign limited partnership  
engaged in the business of collecting consumer debts.

4.

In or about 2007, plaintiff was contacted by Mercantile Adjustment Bureau regarding  
plaintiff's AT&T Universal credit account issued by Citibank.

Page 1 - COMPLAINT

Baxter & Baxter, LLP  
8835 SW Canyon Lane, Suite 130  
Portland, OR 97225  
(503) 297-9031 (Telephone)  
(503) 291-8172 (Facsimile)

EXHIBIT 1  
Page 3 of 7

5.

Plaintiff agreed to a full and final settlement of the outstanding balance on the account, which Mercantile Adjustment Bureau accepted.

6.

In April of 2008, defendant Resurgent contacted plaintiff and demanded payment of the Citibank account.

7.

Plaintiff advised Resurgent that he had settled the account. Resurgent confirmed that it had found records of the settlement.

8.

Redline Recovery sent plaintiff a letter dated December 28, 2009, which stated that the plaintiff owed defendant LVNV \$2,379.11. That statement was false.

9.

Daniel N. Gordon, P.C., sent plaintiff a letter dated May 25, 2010, which stated that plaintiff owed LVNV 2510.51. That statement was false.

10.

In or about November of 2010, plaintiff contacted Resurgent. A Resurgent employee "Sharon" confirmed that Resurgent was aware of the settlement, but stated that Resurgent had referred the account to Daniel N. Gordon, P.C. for continued collection activity.

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FIRST CLAIM FOR RELIEF

FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

11.

Plaintiff incorporates paragraphs 1 - 10 as if fully set forth herein.

12.

Plaintiff is a consumer as defined by the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692a.

13.

Defendants are each a "debt collector" within the meaning of 15 U.S.C. § 1692a.

14.

The alleged debt at issue is a debt within the meaning of 15 U.S.C. § 1692a.

15.

Defendants violated the Fair Debt Collection Practices Act in the following ways:

- 1) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse plaintiff in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d;
- 2) Using false, deceptive, or misleading representations or means in connection with the collection the debt, in violation of 15 U.S.C. § 1692e;
- 3) Making false representations of the character, amount, or legal status of any debt, in violation of 15 U.S.C. § 1692e(2)(A);

16.

As a result of defendants' violations of the Fair Debt Collection Practices Act, plaintiff was



caused to suffer worry, fear, distress, paranoia, embarrassment, damage to his reputation and humiliation, all to her damages in a reasonable amount to be determined by the jury not to exceed \$55,000.

17.

Plaintiff is entitled to statutory damages of \$1,000, pursuant to 15 U.S.C. 1692k.

18.

Plaintiff is entitled to attorney fees, pursuant to 15 U.S.C. § 1692k.

### SECOND CLAIM FOR RELIEF

#### INVASION OF PRIVACY

19.

Plaintiff incorporates paragraphs 1 - 10 as if fully set forth herein.

20.

Defendants' conduct intentionally intruded on plaintiff's solitude, seclusion and/or privacy. Defendants' conduct was highly offensive to plaintiff and would be highly offensive to a reasonable person. Defendants acted with malice.

21.

Defendants' conduct caused plaintiff to suffer damages including invasion of privacy, intrusion of his solitude and seclusion, emotional distress, frustration, mental anguish, and interference with normal and usual activities for which plaintiff seeks damages in a reasonable amount not to exceed \$55,000.

### PRAYER

Plaintiffs demand a jury trial on all claims. Wherefore plaintiff prays for a judgment as follows:

Page 4 - COMPLAINT

Barter & Barter, LLP  
6835 SW Canyon Lane, Suite 130  
Portland, OR 97225  
(503) 287-8031 (Telephone)  
(503) 281-8172 (Facsimile)

1 .1. On Plaintiff's First Claim for Relief for violations of the Fair Debt Collections

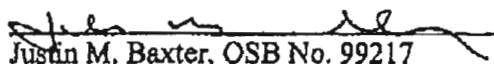
2 Practices Act:

- 3 a. Actual damages in an amount of \$55,000;
- 4 b. Statutory damages of \$1,000; and
- 5 d. Attorney fees and costs.

6 2. On Plaintiff's Second Claim for Relief for Invasion of Privacy:

- 7 a. Actual damages in an amount \$55,000;
- 8 b. Costs and expenses incurred herein.

9 DATED this 22nd day of December, 2010.

11   
12 Justin M. Baxter, OSB No. 99217  
13 Baxter & Baxter, LLP  
14 Attorney for Plaintiff